



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO**

### **COLONIAL PIPELINE COMPANY FOR THE**

### **COLONIAL PIPELINE COMPANY - FAIRFAX DELIVERY FACILITY OIL DISCHARGE**

**IR#2018-N-0008/PC#2018-3002**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Colonial Pipeline Company for the Colonial Pipeline Company - Fairfax Delivery Facility Oil Discharge, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

#### **SECTION B: Definitions**

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Colonial" means Colonial Pipeline Company, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Colonial Pipeline Company is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Facility" means the Colonial Pipeline Company - Fairfax Delivery Facility located at 9555 Colonial Avenue, Fairfax, Virginia.
8. "IAR" means Initial Abatement Measures Report.
9. "Location" means the land, road, storm drain(s) or state water(s) where the oil discharge occurred at the Colonial Pipeline Company - Fairfax Delivery Facility located at 9555 Colonial Avenue, Fairfax, Virginia.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
13. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

18. "Va. Code" means the Code of Virginia (1950), as amended.

19. "VAC" means the Virginia Administrative Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Colonial is the owner and operator of the Facility, located in Fairfax, Virginia.
2. On July 2, 2017, Colonial reported a release of approximately 600 to 700 gallons of gasoline at the Facility. According to the notification, the discharged gasoline impacted soils at the Facility. Colonial hired a contractor to remediate the discharge.
3. DEQ staff visited the facility on July 6, 2017 and met with representatives from Colonial and the City of Fairfax. Staff observed the areas being remediated.
4. DEQ assigned the incident an Incident Number, IR#2018-N-0008.
5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
6. On July 18, 2017, the Department issued a Notice of Violation No. W2017-07-N102 to Colonial for a discharge of oil to the land and state waters.
7. On August 10, 2017, Colonial submitted an IAR, stating a revised release amount of 501 gallons of gasoline.
8. Based on the results of July 2, 2017, reporting and the documentation submitted on August 10, 2017; the State Water Control Board concludes that Colonial has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) and C(6), above.

### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Colonial, and Colonial agrees to pay a civil charge of \$9,150.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to the "Treasurer of Virginia," for the civil charge and for DEQ oil discharge investigative costs and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Colonial shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Colonial shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Colonial for good cause shown by Colonial, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Colonial admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Colonial consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Colonial declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Colonial to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Colonial shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Colonial shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Colonial shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Colonial. Nevertheless, Colonial agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. The Director or his designee terminates the Order after Colonial has completed all of the requirements of the Order;
  - b. Colonial petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Colonial.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Colonial from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Colonial and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Colonial certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Colonial to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Colonial.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Colonial voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17<sup>th</sup> day of November, 2017.



Thomas A. Faha, NRO Regional Director  
Department of Environmental Quality

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Colonial Pipeline Company voluntarily agrees to the issuance of this Order.

Date: 9/18/17 By: *[Signature]*, VP & GM OF OPERATIONS  
(Person) (Title)

Colonial Pipeline Company

STATE OF GEORGIA  
~~Commonwealth of Virginia~~  
City/County of ALPHARETTA/FULTON

The foregoing document was signed and acknowledged before me this 18 day of  
SEPTEMBER, 2017, by GERALD BECK who is  
VP & GM OF OPERATIONS of Colonial Pipeline Company, on behalf of the Company.

*[Signature]*  
Notary Public

\_\_\_\_\_  
Registration No.

My commission expires: APRIL 15, 2018

Notary seal:

